Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:HAR:POSTF-110579-02
CJSantaniello

date: November 18, 2002

to: Team Manager [redacted], [redacted], [redacted]
Attn: Revenue Agent [redacted]

from: Associate Area Counsel, LMSB, Area 1 (LM:F:HAR)

subject: **Large Case Advisory Opinion -** [redacted]

We are responding to your memorandum, dated February 22, 2002, in which you requested our legal advice regarding certain accounting issues resulting from the taxpayer's [redacted] change from the reserve method of accounting for bad debts under section 593[1/] to the specific charge-off method. This memorandum should not be cited as precedent.

Conclusion

Based on the following discussion, LMSB may disregard [redacted]' [redacted] and [redacted] changes in its method of accounting for bad debts under the authority of Rev. Proc. 2002-18, 2002-13 I.R.B. 678. Under this revenue procedure, the Commissioner may require a taxpayer that has changed a method of accounting without the Commissioner's consent to change back to its former method, even in situations, as in the present case, where the taxpayer changed from an impermissible to a permissible method. Thus, by requiring [redacted] to remain on the section 593 reserve method for [redacted], there is no need for either a positive section 481 adjustment in that year or a negative section 481 adjustment in [redacted]. Consequently, LMSB may allow [redacted]' [redacted] refund claim on the ground that [redacted] should not have reported a section 481(a) adjustment for [redacted] when it changed from the section 593 reserve method to the specific charge-off method. [redacted] may also be entitled to an additional reduction in its [redacted] taxable income to the extent its allowable deduction under the reserve method exceeds the amount deducted in that year under the specific charge-off method. Furthermore, because [redacted] is not entitled to a negative section 481(a) adjustment in [redacted], LMSB should increase [redacted]' [redacted] taxable income by the amount of any claimed adjustment.

[1/] All statutory section references are to the Internal Revenue Code in effect during the taxable years at issue in this case.

Issues

1. Whether the taxpayer may amend its [redacted] Form 1120 under Prop. Treas. Reg. § 1.593-14(d)(2)(C)(ii), which was withdrawn before the Service acted on the claim? **U.I.L. Nos. 481.05-00; 585.00-00; 593.00-00**

2. What is the proper period for recapturing a bad debt reserve under section 481(a) resulting from a mandatory accounting change from the reserve method of accounting for bad debts under section 593 to the specific charge-off method, where the taxpayer did not file Form 3115. **U.I.L. Nos. 481.05-0; 585.00-00; 593.00-00**

3. Whether the taxpayer is entitled to the entire negative section 481(a) adjustment in [redacted], the year in which it converted from the section 166 charge off method to the section 593 reserve method, or whether the adjustment must be spread over a six-year period. **U.I.L. Nos. 481.05-0; 585.00-00; 593.00-00**

Facts

LMSB (Financial Services) is presently examining [redacted]'s [redacted], [redacted], and [redacted] consolidated returns (Forms 1120) as part of its Coordinated Industry Case (CIC) program. This case is subject to review and approval by the Joint Committee on Taxation.

During the years under examination, [redacted] was [redacted]. For all years prior to [redacted], it qualified as a [redacted]. [redacted] was also a "[redacted]" within the meaning of [redacted].

On [redacted], [redacted] satisfied the 60-percent asset test appearing in section 7701(a)(19)(C). Consequently, for that year, it computed its deduction for bad debts using the reserve method under section 593(a). See section 593(a)(2) (reserve method only available if bank meets the qualified asset test in section 7701(a)(19)(C)).

On [redacted], [redacted] no longer satisfied the qualified asset test. Relying on Prop. Treas. Reg. §§ 1.593-12, 1.593-13, and 1.593-14, [redacted] changed its method of accounting for bad debts for that year from the section 593 reserve method to the specific charge-off method. See Prop. Treas. Reg. § 1.593-13(c)(2)(iii). As additionally required by that proposed regulation, [redacted] also restated its reserve balance to [redacted], and, beginning in that year, started to recapture the reserve balance

totaling $[redacted] over a six-year period. [redacted] did not file a Form 3115 (either in [redacted] or with its [redacted] return) to request a change in its accounting method. According to [redacted], it did not file Form 3115 because it believed that the mandatory change in its accounting method was automatic under Prop. Treas. Reg. § 1.593-13.[2/]

On its [redacted] Form 1120, [redacted] recaptured $[redacted] of its reserve balance attributable to the mandatory accounting change under section 481(a).[3/] This amount was not, however, reported as "other income" on line 4 of the Schedule M ("Income subject to tax and not reported and booked this year.") Instead, [redacted] reduced its Schedule M expense item "[redacted] Amortization", resulting in a deduction equal to an amount $[redacted] less than it was otherwise entitled to for that item.

As of [redacted], [redacted] again satisfied the requirements of section 7701(a)(19)(C). As a result, it filed two Forms 3115 for that year. The first Form 3115 was filed under Rev. Proc. 85-8, 1985-1 C.B. 495, on [redacted]. In its cover letter, dated [redacted], [redacted] stated:

[redacted]

The second form was filed with [redacted]' [redacted] Form 1120. In that form, [redacted] stated that it was filing the Form 3115 under the authority of Prop. Treas. Reg. § 1.593-14(d)(2)(ii), and that the bank had previously filed a Form 3115 under Rev. Proc. 85-8 to

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[2/] As discussed below, however, even though the change was "automatic" under Prop. Treas. Reg. § 1.593-13, [redacted] was still required to file Form 3115 with its [redacted] return under Prop. Treas. Reg. § 1.593-13(b).

[3/] Although Prop. Treas. Reg. § 1.593-13(c) required that the reserve balance be recaptured ratably over a six-year period, $[redacted] million is not one-sixth of $[redacted].

protect itself in the event the Service objected to the method prescribed in the proposed regulations.[4/]

On [redacted], [redacted] filed a Form 1120X for [redacted], seeking a refund of $[redacted]. The claim is based, in part, on a $[redacted] reduction to its [redacted] taxable income, representing the reported [redacted] section 481(a) adjustment attributable to [redacted]' [redacted] change from the reserve method to the specific charge-off method. [redacted]' bases this portion of its claim on the one-year exception appearing in Prop. Treas. Reg. § 1.593-14(d)(2)(ii).

[redacted]' [redacted] claim is also based on an additional reduction in its [redacted] taxable income of $[redacted]. This decrease constitutes the difference between its actual [redacted] bad debt deduction, computed under the specific charge-off method, and the amount [redacted] now claims it is entitled to deduct for that year using the reserve method under section 593.

Relevant Law

Section 166(a) provides that there shall be allowed as a deduction any debt which becomes worthless within the taxable year. Under this method (i.e., the specific charge-off method), deductions are allowed for bad debts in the year that they become worthless.

Section 593(a)(1) provides that, except as provided in paragraph (2), there shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Under the reserve method, deductions are allowed currently for debts that may become worthless in the future. Deductions under section 593 are in lieu of any deduction under section 166(a). The reserve method under section 593 is available only to thrift institutions that meet the requirements of sections 593(a)(1) and 593(a)(2).

Section 593(a)(2) provides that section 593(a)(1) shall apply to a mutual savings bank only if it meets the requirements of section 7701(a)(19)(C). To qualify under section 7701(a)(19)(C),

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[4/] As discussed below, [redacted]' primary position was to apply the provisions of Prop. Treas. Reg. § 1.593-13, which would have essentially placed it in the same position as though it had not failed to satisfy the 60-percent asset test in section 7701(a)(19)(C). Otherwise, [redacted]' secondary position is that, in addition to recapturing the $[redacted] over six years, it is entitled to a negative section 481 adjustment of $[redacted] in [redacted], when it switched back to the reserve method.

at least 60 percent of the bank's total assets must (at the close of the taxable year) consist of cash and certain other assets described in subsections (i) through (xi). As noted above, [redacted] did not satisfy this test as of [redacted], but did as of [redacted] and all years before [redacted].

Section 446(e) provides that the Commissioner's consent must be obtained to change an accounting method. Under Treas. Reg. § 1.446-1(e)(2)(i), a taxpayer who changes the method of accounting employed in keeping his books must first secure the consent of the Commissioner. The Commissioner's consent is required regardless of whether the new method is proper or permitted under the Code or regulations.

Treas. Reg. § 1.446-1(e)(2)(ii)(a) provides that a change in the treatment of any material item used in the taxpayer's overall plan of accounting is a change in accounting method. A change from, or return to, the reserve method is a change in accounting method under section 446. Rev. Rul. 85-171, 1985-2 C.B. 148.

To secure the Commissioner's consent to a change in the method of accounting, the taxpayer must file an application on Form 3115 with the Commissioner during the taxable year in which the taxpayer desires to make the proposed change. Treas. Reg. § 1.446-1(e)(3)(i). Unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change of accounting, whether the change is from a permissible or impermissible method. Rev. Proc. 92-20. Permission to change a taxpayer's method of accounting will not be granted unless the taxpayer agrees to the Commissioner's prescribed terms and conditions for effecting the change, including the taxable year or years in which any adjustment necessary to prevent amounts from being duplicated or omitted is to be taken into account.

Section 481(a) provides that upon a change in accounting method, adjustments must be made as necessary to prevent amounts from being duplicated or omitted in computing taxable income. An institution's treatment of its bad debts affects the timing of its computation of taxable income, and a change from or return to the reserve method of section 593 is a change in accounting method that requires an adjustment under section 481(a). Rev. Rul. 85-171.

Section 481(c) and Treas. Reg. § 1.481-5 provide that the adjustment required by section 481(a) may be taken into account in determining taxable income in the manner and subject to the conditions agreed upon by the Commissioner and the taxpayer. In the absence of this special rule, the entire net section 481(a) adjustment is taken into account in the year of change, subject to

section 481(b), which limits the amount of tax where the net section 481(a) adjustment is substantial.

Treas. Reg. § 1.481(c)(2) provides that if a change in method of accounting is voluntary (i.e., initiated by the taxpayer), the entire amount of the adjustments required by section 481(a) is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. The Service, however, has broad discretion to determine the proper manner of effecting a change in accounting method. Under Treas. Reg. § 1.446(e)(3)(ii), the Commissioner is authorized to prescribe administrative procedures setting forth limitations, terms, and conditions necessary for a taxpayer to obtain consent to a change in accounting method, including limitations, terms, and conditions for determining and including adjustments under section 481(a).

A change in the method of accounting initiated by the taxpayer includes not only a change which he originates by securing the Commissioner's consent, but also a change from one method of accounting to another made without the Commissioner's advance approval. Treas. Reg. § 1.481-1(c)(5). A change in the taxpayer's method of accounting required as a result of an examination of the taxpayer's income tax return (i.e., an involuntary change) will not be considered as initiated by the taxpayer. Id. On the other hand, a taxpayer who, on his own initiative, changes the method of accounting in order to conform to the requirements of any federal income tax regulation or ruling shall not, merely because of such fact, be considered to have made an involuntary change. Id.

In 1992, the Service issued proposed regulations under section 593 to provide guidance for thrift institutions that become ineligible to use the section 593 reserve method of accounting for bad debts. Prop. Treas. Reg. § 1.593-12 provides basic rules for thrift institutions that become ineligible to use the reserve method of section 593. Prop. Treas. Reg. § 591-13 provides an automatic procedure for changing from the reserve method of section 593. Prop. Treas. Reg. § 1.593-14 provides guidance for institutions that regain their eligibility to use the reserve method.

Prop. Treas. Reg. § 1.593-12 applies to any "former thrift institution" that maintains a reserve for bad debts under section 593 at the time it becomes a former thrift institution. Under that regulation, a former thrift institution must change, in any "ineligibility year" from the reserve method of accounting for bad debts allowed by section 593. If the institution is a "large institution", it must change to the specific charge-off method of

accounting for bad debts in accordance with Prop. Treas. Reg. § 1.593-13. If the institution is not a large institution, it must change to either the specific charge-off method or the reserve method allowed by section 585, in accordance with Prop. Treas. Reg. § 1.593-13.

The term "former thrift institution" is defined in Prop. Treas. Reg. § 1.593-12(b)(1) as an organization ineligible to for any reason to maintain a reserve for bad debts under section 593, if for any preceding taxable year it was eligible to maintain a reserve under section 593. An "ineligibility year" is any taxable year in which an institution is ineligible to maintain a reserve for bad debts under section 593 after being eligible to maintain, and maintaining, a reserve under section 593 for the immediately preceding taxable year. Prop. Treas. Reg. § 1.593-12(b)(2). An institution is a large institution if it is both a former thrift institution and its average total assets exceed $500 million. Prop. Treas. Reg. § 1.593-12(b)(3).

Prop. Treas. Reg. § 1.593-13(a)(1) sets forth the procedure that a former thrift institution must follow in changing, in an ineligibility year, from the reserve method of section 593. As provided in that paragraph, a change from the reserve method of section 593 is a change in accounting method under section 446, and an adjustment is required under section 481(a). Prop. Treas. Reg. § 1.593-13 provides an automatic procedure for former thrifts to follow in changing from the reserve method of section 593. If a former thrift institution complies with this procedure, its change will be treated as made with the consent of the Commissioner.

Prop. Treas. Reg. § 1.593-13(b) provides that in order to change its method of accounting for bad debts, the institution must file Form 3115. The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The Form 3115 must also contain the following words at the top of the form: "Automatic Change from Section 593 Reserve Method under § 1.593-13." The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the ineligibility year.

Under Prop. Treas. Reg. § 1.593-13(c)(2)(i), a former thrift institution that changes to the specific charge-off method must restate the amount of its reserve for bad debts to zero as of the first day of the year of change (its ineligibility year). The amount of the former thrift institution's section 481(a) adjustment

is the amount of the institution's reserve immediately before the restatement. Prop. Treas. Reg. § 1.593-12(c)(2)(ii). Under Prop. Treas. Reg. § 1.593-13(c)(2)(iii), the section 481(a) adjustment must be included in the former thrift institution's income ratably over six taxable years, beginning in the ineligibility year.

Prop. Treas. Reg § 1.593-14 provides guidance for thrift institutions that regain their eligibility to use the reserve method of section 593 (requalified thrifts). A requalified thrift may use the specific charge-off method of accounting for bad debts or the reserve method of section 593. To change to either of these methods, a requalified thrift must follow the rules of Prop. Treas. Reg. § 1.593-14.

Prop. Treas. Reg. § 1.593-14(b) requires a requalified thrift to obtain the Commissioner's consent to the change. Under that section, in order to change its method of accounting for bad debts, the institution must file Form 3115.[5/] The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The Form 3115 must also contain the following words at the top of the form: "Change to Specific Charge-Off Method under § 1.593-14" or "Return to Section 593 Reserve Method Under § 1.593-14". The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the taxable year in which the institution seeks to change its method of accounting for bad debts.

Prop. Treas. Reg. § 1.593-14(d) provides rules for a requalified thrift that returns to the reserve method of section 593. Under Prop. Treas. Reg. § 1.593-14(d)(2)(ii), an institution that changed from the reserve method in an ineligibility year may elect to treat itself in the ineligibility year and the taxable year immediately succeeding the ineligibility year as if it had not been required to change, and had not changed, from the reserve method of section 593 (i.e., as if it had not become ineligible to maintain a reserve under section 593 and had continued to maintain its reserve under section 593). Any election under paragraph (d)(2)(ii) must be made by the due date (including extensions) of

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[5/] This would explain why [redacted] filed two separate Forms 3115 in [redacted]. Based on the statement on the Form 3115 filed under Rev. Proc. 85-8, it was filed under the revenue procedure in the event the Service determined that the proposed regulations did not apply.

the institution's original federal income tax return for the taxable year immediately succeeding the ineligibility year.

To make the election available in Prop. Treas. Reg. § 1.593-14(d)(2)(ii), the institution must file an amended federal income tax return for the ineligibility year, treating itself as remaining on the reserve method of section 593 in that year. Subparagraph (d)(2)(ii)(1). The institution must also file its original income tax return for the taxable year immediately succeeding the ineligibilty year, treating itself as having remained on the reserve method for both years. Id. The institution is also required to clearly state on Form 3115 (filed under Prop. Treas. Reg. § 1.593-14(b)) that it is making the one-year election under subparagraph (d)(2)(ii).

Under the authority of Treas. Reg. § 1.446-1(e)(3)(ii), the Commissioner issued Rev. Proc. 92-20, 1992-1 C.B. 685 to provide special rules for accounting method changes initiated by the taxpayer. Under this revenue procedure, the section 481(a)adjustment period will be for net adjustments will be three or six years, depending on the accounting method from which the taxpayer is changing. Id. at Section 5.03

As specified in Prop. Treas. Reg. § 1.593-12(c), "This section and §§ 1.593-13 and 1.593-14 are effective for taxable years ending after [Insert date that is 30 days after this document is published as a final regulation in the Federal Register." These regulations, however, were never finalized, and thus, have never been in effect. In fact, on July 12, 2000, the Service withdrew the regulations. Fed. Reg. Vol. 65, No. 134 (July 12, 2000).

Treas. Reg. § 301.7805-1(c) provides that proposed regulations are issued to provide timely guidance when delays inherent in the preparation of temporary or final regulations would be unwise or when additional input is required before a final position can be adopted by the Service. Consequently, proposed regulations are only preliminary proposals; they are not binding on the Service or on the courts. Estate of Leavitt v. Commissioner, 90 T.C. 206, 218 (1988). See also Garvey, Inc. v. United States, 1 Cl. Ct. 108, 118 (1983), aff'd, 726 F.2d 1569 (Fed. Cir. 1984), cert. denied, 469 U.S. 823 (1984). The Tax Court had made it clear that "[w]hile proposed regulations do constitute a body of informed judgment...which courts may draw on for guidance,...we accord them no more weight than a litigation position." KTA Tator, Inc. v. Commissioner, 108 T.C. 100, 102-103 (1997). Similarly, in Miller v. Commissioner, 70 T.C. 448 (1978), the Tax Court rejected the taxpayer's reliance on proposed regulations, stating "[w]e do not rely on [the proposed regulation] as authority since regulations

which have not yet been formally adopted 'carry no more weight than a position advanced on brief by the [Service].' Id. at 460, quoting F.W. Woolworth Co. v. Commissioner, 54 T.C. 1233, 1265-66 (1970).

Rev. Proc. 92-20 provides general procedures under Treas. Reg. § 1.446-1(e) for obtaining the Commissioner's consent to change accounting methods. As set forth in the revenue procedure, it was "designed to encourage prompt compliance with proper tax accounting principles, and to discourage taxpayers from delaying the filing of applications for permission to change an impermissible accounting method." Rev. proc. 92-20, Section 1. It further provides:

> this revenue procedure [generally] uses a gradation of incentives to encourage prompt voluntary compliance. Under this approach, a taxpayer generally receives better terms and conditions for any change in accounting method if the taxpayer files its request to change methods before it is contacted for examination by the Internal revenue Service.

Rev. Proc. 92-20 provides that a taxpayer must file an application on Form 3115 within 180 days after the beginning of the taxable year in which the taxpayer desires to make the proposed change. Id. at Section 5.01(1). A Form 3115 that is not filed within the 180-day period may nevertheless be considered as timely filed under Treas. Reg. § 301.9100-1 upon a showing of good cause by the taxpayer and a showing that granting an extension of time to file the Form 3115 will not jeopardize the government's interest. Id. at Section 5.02(a). However, applications filed beyond 90 days after the due date of the Form 3115 are presumed to jeopardize the government's interest except in very unusual and compelling circumstances. If [redacted]' change in accounting method qualifies under Rev. Proc. 92-20, the section 481(a) adjustment may be taken into account ratably over six taxable years. Id. at Section 5.03(2).

The procedures that accrual basis taxpayers must follow to change their method of accounting for bad debts from the section 166 charge off method to the reserve method appear in Rev. Proc. 85-8, 1985-1 C.B. 495. Section 5.03 of Rev. Proc. 85-8 provides a procedure to determine the appropriate period for taking into account the section 481(a) adjustment. Under that paragraph, when the entire amount of the section 481(a) adjustment is attributable to the tax year immediately preceding the year of change (first preceding year), the total adjustment is to be taken into account in computing taxable income for the year of change. Subsection 5.04 provides that any portion of any net operating loss arising in

the year of change or in any subsequent year in the adjustment period that is attributable to the negative section 481(a) adjustment may not be carried to those three tax years preceding the year of change of which section 172 otherwise would require it first to be carried. Under Section 4.02, the adjustment period cannot exceed 6 years.

Rev. Proc. 2002-18, 2002-13 I.R.B. 678, section 2.06, provides as follows:

> The Commissioner may require a taxpayer that has changed a method of accounting without the Commissioner's consent to change back to its former method. The Commissioner may do so even when the taxpayer changed from an impermissible to a permissible method. The change back to the former method may be made in the taxable year the taxpayer changed without consent, or if that year is closed by the running of the period of limitations, in the earliest open year. [citations omitted] For example, the Service may change a taxpayer back to its former impermissible method of accounting if the taxpayer changed to a permissible method of accounting without the Commissioner's consent and miscalculated the § 481(a) adjustment, even where the statute of limitations has expired for the year of change.

[emphasis added].

Discussion

In this case, in [redacted] [redacted] changed from the section 593 reserve method to the specific charge-off method in reliance on Prop. Treas. Reg. § 1.593-13(c)(2)(iii). It also restated its reserve balance to [redacted], and, beginning in that year, started to recapture the reserve balance totaling $[redacted] over a six-year period. [redacted] did not file a Form 3115 (either in [redacted] or with its [redacted] return) to request a change in its accounting method. According to [redacted], it did not file Form 3115 because it believed that the mandatory change in its accounting method was automatic under Prop. Treas. Reg. § 1.593-13. Thus, on its [redacted] Form 1120, [redacted] recaptured $[redacted] of its reserve balance attributable to the mandatory accounting change under section 481(a).

As of [redacted], [redacted] once again satisfied the requirements of section 7701(a)(19)(C). Consequently, the bank filed two Forms 3115 for that year, one on [redacted] under Rev. Proc. 85-8, and a second with its [redacted] Form 1120 under Prop. Treas. Reg. § 1.593-14(d)(2)(ii). As a result of this change, on [redacted], [redacted] filed a Form 1120X for [redacted], seeking a

refund of $[redacted]. This claim is based, in part, on a $[redacted] reduction to its [redacted] taxable income, representing the reported [redacted] section 481(a) adjustment attributable to [redacted]' [redacted] change from the reserve method to the specific charge-off method. [redacted]' bases this portion of its claim on the one-year exception appearing in Prop. Treas. Reg. § 1.593-14(d)(2)(ii).

[redacted]' [redacted] claim is also based on an additional reduction in its [redacted] taxable income of $[redacted]. This decrease constitutes the difference between its actual [redacted] bad debt deduction, computed under the specific charge-off method, and the amount [redacted] now claims it is entitled to deduct for that year using the reserve method under section 593.

But for the method change in this case, there would be no need for either a positive section 481 adjustment in [redacted] or a negative section 481 adjustment in [redacted]. Because Rev. Proc. 2002-18 authorizes the Commissioner to require a taxpayer to change back to its former method of accounting for bad debts in the taxable year the taxpayer changed without consent, he may require [redacted] to change back to the reserve method in [redacted]. According to the revenue procedure, he may take this action even though the section 593 reserve method constitutes an impermissible method of accounting for that year.

If the Commissioner requires [redacted] to remain on the section 593 reserve method, such action will eliminate the [redacted] and [redacted] section 481 adjustments. Consequently, LMSB may allow, either partially or in total, [redacted]' [redacted] refund claim on the ground that [redacted] should not have reported a section 481(a) adjustment for [redacted] when it changed from the section 593 reserve method to the specific charge-off method. [redacted] may also be entitled to an additional reduction in its [redacted] taxable income to the extent that its allowable deduction under the reserve method exceeds the amount deducted in that year under the specific charge-off method. Furthermore, because [redacted] is not entitled to a negative section 481(a) adjustment in [redacted], the Service should increase [redacted]' taxable income for that year by the amount of any section 481 adjustment claimed by the taxpayer on its [redacted] Form 1120.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later.

Please call Carmino J. Santaniello at (860) 290-4077 if you have any questions or require further information in this matter.

BRADFORD A. JOHNSON
Associate Area Counsel
LMSB, Area 1

By: _____
CARMINO J. SANTANIELLO
Attorney